

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF THOROUGHbred VILLAGE TO LIQUIDATING
TRUST'S FORTY-SECOND OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)
(Claim No. 8953)**

Thoroughbred Village hereby files its response (the "Response") to the Liquidating Trust's Forty-Second Omnibus Objection to Landlord Claims (the "Objection"). In the Objection, the Liquidating Trust asserts that Thoroughbred Village's Claim No. 8953 (the "Claim"), filed in the amount of \$1,081,955.96 should be reduced and allowed in the sum of \$34,940.96. Thoroughbred Village opposes the relief sought by the Liquidating Trust in the Objection and asks that the Claim be allowed in the full amount in which it was filed. In support of its Response, Thoroughbred Village states the following:

1. The Liquidating Trust's Objection asserts that the Claim should be reduced subject to modification upon timely receipt of mitigation information.
2. The Claim should not be reduced as Thoroughbred Village disputes that mitigation is required under applicable law and further states that the new leases replacing the Debtor's lease came at a cost that does not mitigate the damages sought in its Claim.

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Counsel for Thoroughbred Village

3. Circuit City rejected the space it rented from Thoroughbred Village (Cool Springs Superstore, 545 Cool Springs Blvd, Franklin, TN also known as store number 3226 (the “Location”)) effective February 23, 2009, pursuant to Bankruptcy Code Section 365(d)(2) and procedures approved by this Court (the “Rejection”).

4. Since the date of the Rejection, Thoroughbred Village entered into a lease with Off Broadway Shoes for a portion of the Location (Suite 115 consisting of 17,615 sq. ft.) (the “Off Broadway Lease”) effective April 7, 2010 for a period ending July 31, 2010 with a beginning monthly rent in the amount of \$23,816.42, and further entered into a lease with The Tile Shop for a portion of the Location (Suite 117 consisting of 18,147 sq. ft.) (the “Tile Shop Lease”) effective May 1, 2010 for a period ending June 30, 2020 with a beginning monthly rent in the amount of \$19,659.25.

5. At the time of the Rejection, the monthly rent obligation paid by Circuit City was \$47,100. The combined rent under the Off Broadway Lease and the Tile Shop Lease that became effective approximately one year after the Rejection is \$43,475.67.

6. The cost to Thoroughbred Village for the Off Broadway Lease and the Tile Shop Lease was \$1,575,213.37. This amount should be applied to reduce any benefit received from the new leases.

7. Thoroughbred Village has been unable to mitigate its damages in any meaningful way that would reduce its Claim as limited by §502(b)(6), such that its Claim should be allowed in full, as filed.

8. The party with authority to discuss mitigation issues and the facts stated in this Response is the following:

Charlie Warfield
Brookside Properties, Inc
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615-467-3400

WHEREFORE, Thoroughbred Village requests that the Court deny the Liquidating Trust's Objection to Thoroughbred Village's Claim No. 8953 and that the Claim be allowed by Court order in the amount of \$1,081,955.96.

Dated: June 25, 2012

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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CERTIFICATE OF SERVICE

I, Jennifer M. McLemore, hereby certify that on the 25th day of June 2012, a true and correct copy of the foregoing Response of Thoroughbred Village to Liquidating Trust's Forty-second Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No. 8953) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter and emailed separately to the following:

Jeffrey N. Pomerantz, Esquire
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/s/ Jennifer M. McLemore
Jennifer M. McLemore